IN THE HIGH COURT OF JUDICATURE :: ANDHRA PRADESH

AT HYDERABAD

THURSDAY, THE TWENTY EIGHTH DAY OF JULY, TWO THOUSAND AND FIVE

PRESENT:

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NOs : 36905 of 1998, 125, 135 & 147 of 1999

1. WRIT PETITION NO : 36905 of 1998:

Between:

R.S.Visweswaran .. Petitioner

And

1. G.Kondababu and another .. Respondents

2. WRIT PETITION NO : 125 of 1999:

Between:

R.S.Visweswaran .. Petitioner

And

1. K.Sanakrarao and another .. Respondents.

3. WRIT PETITION NO : 135 of 1999:

Between:

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R.S.Visweswaran .. Petitioner

And

1. E.Appalanaidu and another .. Respondents

4. WRIT PETITION NO : 147 of 1999:

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Between:

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R.S.Visweswaran .. Petitioner

And

1. K.Heera Singh and another .. Respondents

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COMMON ORDER:

Inasmuch as common questions of law and fact are involved in all these Writ Petitions, these four Writ Petitions can be disposed of together.

2. In all these cases, the respondents-workmen are salesmen and pump operators working in the petitioner's Petrol Bunk viz., M/s.Chidambaram & Co., Balighattam, Narsipatnam, Visakhapatnam District.

3. It is a matter of record that the services of the respondents-workmen, in all these cases, were terminated on 28-09-1994, after

conducting an enquiry into the misconduct alleged against them. It may be noticed that the misconduct alleged against all the workmen in these cases is one and the same nature i.e., misappropriation of amounts from 1991 to 1994 - purported to have committed more than twenty occasions. However, in one case, it is the only committal of cash irregularities along with others. Aggrieved by their termination, they have raised a dispute in I.D.No.598 of 1994, before the Labour Court at Visakhapatnam.

4. The Labour Court, insofar as conducting a domestic enquiry was concerned, held that the same was just, valid and therefore, proceeded to evaluate the evidence, considered by the disciplinary authority. However, the Labour Court found that the charges framed against the respondents-workmen are all vague and also observed that when a person was found to have misappropriated the amounts from the month of April 1991 to March 1994, why the petitioner-management waited so long to take action against all the workmen. If the petitioner-management found irregularities from April, 1991 to March, 1994, the question as to how these irregularities were not brought to the notice of the management earlier and why the action was not taken against the workmen is not forthcoming. The Labour Court ultimately found that:

> "Though the management did not give numbers to the various charges, the fact remains that the charge memo marked as Ex.M-24 sets out as many as five charges. The first charge contains as many as 20 sub-charges alleging that the workman defrauded the management by various amounts. Those entries numbering 20 pertain to the period from 04-08-1991 to 07-03-1994. That means this defalcation allegedly occurred as many as 20 times during 2 ½ years period. Charge No.2 pertains to a so called misconduct of insubordination and violating the rules. Charge No.3 alleged that the workman was negligent and slow in discharging his duties. Charge No.4 pointed out that the workman was not obeying the instructions of the management and was negligent. A reading of the charge memo makes it amply clear that charges are very vague. In the first charge, the management came up with 20 allegations of misconduct against the workman spread over a period of 2 ½ years up to April, 1994. But, what prevented the management from taking action on each of those dates when it found short remittance, and how the short remittance was detected were also not indicated in the charges. The charges 2 to 4 are even more cryptic and set out only sweeping allegations against the workman. Now coming to

> the corresponding evidence adduced by the management. The management simply relied upon its own endorsements in Ex.M-3 to M-17 pointing out this shortage in cash. But, the belated reliance upon such allegations clearly suggests that either the management dropped action against those cash irregularities against the workman or fabricated those irregularities subsequently as an after thought. As a matter of fact, cash irregularity is a serious misconduct because it amounts to misappropriation of the funds of the employer. If the management had tolerated such misappropriation relatable not to one or two months prior to the date of issue of the charge sheet but from 04-08-1991 onwards, it has to be understood that the management was not mindful of those lapses and dug them out only after the management and the workman fell out due to different reasons."

5. It was also noticed by the Labour Court that there is no explanation for the inordinate delay of varying degrees corresponding to each of these allegations of their conduct, therefore, the management cannot persuade this Court to hold that the management was either not serious about those irregularities or fabricated those irregularities for preparing the ground for the removal of the workmen. The enquiry officer simply readily accepted such type of evidence adduced by the management to establish such grave charges of misappropriation.

6. Learned Counsel for the petitioner-management strenuously contended that the Labour Court having found that the enquiry is valid, it was not open for it to go into the merits of the findings recorded in the domestic enquiry. I cannot agree with such a submission made by the learned counsel for the petitioner-management. The enquiry report would be submitted by the enquiry officer after completing the enquiry. Even if the enquiry was properly conducted that does not mean to say that the Labour Court has no jurisdiction to go into the evidence and evaluate the same and come to a different conclusion.

7. The learned Counsel for the petitioner-management also made a faint effort to say that since the Labour Court, earlier, pointed out that the domestic enquiry was invalid, and therefore, again it ought not to have held that the enquiry is valid in the present proceedings and to have

proceeded further. However, it is not the case of the petitioner-management that they have filed an application to permit them to lead evidence on the earlier findings of the Labour Court holding that the enquiry was not valid. But, there is no such effort made by the petitioner-management. In the absence of that, it does not lie in the mouth of the management to plead that the Labour Court was wrong in holding that the enquiry is valid in the proceedings, in spite of the fact that it was earlier held to be invalid. Therefore, this itself would show that the management is playing hide and seek. Except raising this ground, no other legal grounds have been raised by the petitioner-management.

8. In the circumstances, I am of the considered opinion that the Labour Court has discussed each and every aspect of the matter and came to the conclusion that the workmen cannot be held to be guilty of the charges for the evidence placed before it and therefore, set aside the punishment imposed by the management and directed the reinstatement of the workmen into service with full wages and continuity of service.

9. Thus, taking into totality of the matter, I am of the considered view that the Labour Court has not committed any error warranting interference of this Court under Article 226 of the Constitution of India. The Writ Petitions are devoid of merit and are liable to be dismissed.

10. Accordingly, all the Writ Petitions are dismissed without any order as to costs.

July 28, 2005

KVR